

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Truth-in-Billing and)	
Billing Format)	WC Docket No. 04-208
)	
National Association of State Utility)	
Consumer Advocates Petition for)	
Declaratory Ruling Regarding Monthly)	
Line Items and Surcharges Imposed by)	
Telecommunication Carriers)	

**COMMENTS OF GLOBAL CROSSING
NORTH AMERICA, INC.**

Pursuant to the Commission’s Public Notice initiating this proceeding,¹ Global Crossing North America, Inc. (“Global Crossing”) submits these comments in response to the Petition² of the National Association of State Utility Consumer Advocates (“NASUCA”) that in essence requests that the Commission censor legitimate commercial speech.

NASUCA requests that the Commission prohibit interexchange carriers and wireless providers from including on their bills certain lines items that depict the recovery of direct and indirect costs associated with various governmental social programs and taxes unless a regulator consents to such inclusion in advance.³

¹ Public Notice, *Comments Cycle Established for NASUCA’s Petition for Declaratory Ruling Regarding Truth-in-Billing*, WC Dkt. 04-208 (June 15, 2004).

² *Truth-in-Billing and Billing Format*, WC Dkt. 04-208, National Association of State Utility Consumer Advocates Petition for Declaratory Ruling (March 30, 2004) (“Petition”).

³ *E.g.*, Petition at vii.

NASUCA's petition is anti-consumer, anti-open government and ultimately proscribed by the First Amendment. The Commission should dismiss NASUCA's petition.

First, NASUCA's petition is decidedly anti-consumer. The end result of grant of NASUCA's petition would be to deny to consumers vital information regarding the significant direct and indirect costs of governmentally-mandated social programs for which consumers are ultimately required to foot the bill. There is no doubt that the costs of these programs are enormous. Universal service fund assessments, for example, directly amount to around nine percent of interstate revenues. Yet, NASUCA wishes that the public remain unaware of these charges. This approach would deny to consumers information that may permit them to make informed decisions about the social and fiscal utility of these programs. On its face, that is *not* a position taken with the best interests of consumers in mind.

Second, for the same reasons that NASUCA's proposal is anti-consumer, it is also anti-open government. Perhaps it would be best for government if the costs of various programs were hidden and, thereby, immune from public scrutiny. In that way, consumers (voters) would be denied information necessary to make informed political choices. Congress, however, has repeatedly found that an open government and an informed electorate best serve the public interest.⁴

Third, there is no question that truthful billing statements serve a compelling interest. However, as NASUCA's own petition demonstrates, the various line items about which it complains are, in fact, truthful and consistent with this Commission's truth-in-billing guidelines. With respect to USF surcharges for example, carriers now

⁴ *E.g.*, Sunshine Act, Freedom of Information Act.

display their direct costs through one line item and their own administrative costs in a separate line item. With respect to the latter line item, most carriers have effectively disclaimed that they are required to assess the charges through a separate line item. These are wholly truthful statements.⁵

NASUCA is left to assert that such line items are inherently misleading because they prevent consumers from engaging in price shopping.⁶ This is silly. Consumers are perfectly capable of comparing bottom line results on their bills. What NASUCA really wants is to deprive consumers of information about various programs to which they may, if armed with relevant knowledge, object. NASUCA cannot, and does not, explain how this result would be in the public interest.

At bottom, NASUCA's petition is contrary to the First Amendment. Like other forms of speech, commercial speech enjoys First Amendment protection.⁷ Indeed, the Supreme Court has all but abrogated the distinction between commercial and other forms of speech.⁸ Both enjoy full First Amendment protections.

For the regulations proposed by NASUCA to survive (even if unwisely adopted), they must satisfy a compelling governmental intent and be narrowly tailored to further that interest.⁹ NASUCA's petition fails on both counts. NASUCA would simply prohibit a certain type of speech to achieve its end. Blanket prohibitions are not narrowly

⁵ To the extent that certain statements are not truthful, the proper approach is an enforcement proceeding against the offender, not censorship of truthful commercial speech.

⁶ Petition at 37.

⁷ *E.g., Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 475 U.S. 748 (1976).

⁸ *See, e.g., Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557 (1980) (applying intermediate scrutiny); *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).

⁹ *See, e.g., Central Hudson, supra.*

tailored devices.¹⁰ The FCC has numerous less-restrictive means of having carriers record truthful bills. Enforcement proceedings and a requirement for a separate line item for administrative costs are two such devices in the FCC's arsenal that the FCC has and may continue to utilize.¹¹

Finally, NASUCA's petition does serve a useful purpose, albeit not the one NASUCA envisions. Today's telecommunications environment is rampant with various subsidies, social programs and other assessments for which carriers are intended to play collection agent. These middleman roles impose enormous social costs with no countervailing consumer benefit. Consumers will ultimately pay the price for such subsidies and social programs in any event. It would make more sense for these charges to be assessed directly, rather than indirectly, upon consumers. At a minimum, the costs of the middleman role would be eliminated, immediately resulting in consumer savings. At best, consumers would see directly and in the first instance the costs that they are

¹⁰ See, e.g., *Liquormart, Inc.*, 517 U.S. at 504 (opinion of Stevens, J.); *U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1234 n.5 (10th Cir. 1999), *cert. denied*, 2000 LEXIS 3811 (2000).

¹¹ Moreover, NASUCA's assertion that it merely seeks to regulate conduct, and not speech (Petition at 63-64), is clearly wrong. See *Verizon Northwest, Inc. v. Showalter*, 282 F. Supp. 2d 1187, 1190-91 (W.D. Wash. 2003).

expected to pay. The existence, scope and expense of these programs -- and not billing formats -- are the real cause for concern that the Commission and perhaps Congress should address.

Respectfully submitted,

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Certificate of Service

I hereby certify that, on this 14th day of June, 2004, copies of the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid upon:

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